

In response to FCC docket item #02-231, "Notice of Proposed Rulemaking" regarding the inclusion of a "broadcast flag", I submit the following as comment.

I have read through the notice and find it rather disturbing. In the introduction, the notice states the following:

In the absence of a copy protection scheme for digital broadcast television, content providers have asserted that they will not permit high quality programming to be broadcast digitally.¹ Without such programming, consumers may be reluctant to invest in DTV receivers and equipment, thereby delaying the DTV transition.²

Content providers assert that they would not allow high quality programming to be broadcast digitally without some form of copy protection. This will not be the case if public demand for such programming existed. Regardless of the existence of a broadcast flag, content providers would generate supply if the public demands it. This is simple economics. If a content provider still refuses to meet the demand, another provider will step in to do so.

Copy protection technology and digital rights management (DRM) is touted by industry as a means of providing high-quality entertainment to the public. From what I have read on various Internet newsgroups, the opinion of the public is that such copy protection schemes actually *turn off* demand for content, due to the lack of fair use rights of the content. I have purchased music content online from a specific provider because I maintained my fair use rights to the media. I could burn it to a CD for playback in my home stereo or archive it on my PC without any sort of restrictions placed on me by the provider, except for the usual restrictions that come with copyrighted media (no commercial broadcast or unauthorized distribution, etc.) The preservation of my fair use rights is what compelled me to make my purchase. Had I been denied my rights of fair use, such as no CD burning or playback only on my PC, I would not have made the purchase. Much like gun control laws, DRM rules only succeed in "keeping honest people honest." Regardless of the copy protection used, somebody will find a way to circumvent it.

Regarding the "broadcast flag" itself, this flag has the potential to render *any and all* broadcast recording by the home consumer impossible. I have read elsewhere that the VCR was predicted to be the downfall of the movie industry, since the public could wait until a movie was released on videotape before viewing it, making copies of the tape in the process. As it turns out, the VCR did not kill the movie industry; in fact, quite the opposite has occurred, and gross revenue from home video *sales* has outpaced gross revenue from movie theater ticket sales since 1986.³ If the technology exists that would prevent consumers from recording broadcast programming, then consumers may shy away from such technology, further hampering the DTV transition.

In short, the "broadcast flag," like any other means of copy protection, is not in the interests of the consuming public and should not be adopted.

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¹ See, e.g., Letter from Susan L. Fox, Walt Disney Company, to Magalie Roman Salas, Secretary, FCC, CS Docket No. 97-80 (Nov. 8, 2001).

² See NCTA, *The Transition to Digital Television*, <http://www.ncta.com/legislative/legAffairs.cfm?legRegID=15>.

³ Weinberg, Charles B. (2000, April 30; paper revised 2000, 19 July). Marketing models improve profit picture: it's about time. [Online]. Available: <http://www.commerce.ubc.ca/Marketing/Weinberg/movies2000.pdf> [2002, December 6]